

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Jonathan BERALL, M.D., M.P.H.,

Plaintiff,

vs.

VERATHON INC., et al.,

Defendants.

Civil Action No. 1:10-cv-05777-BSJ

**DECLARATION OF JOEL B. ARD IN SUPPORT OF
VERATHON INC.'S MOTION TO STAY**

I, Joel B. Ard, declare as follows:

1. I am an attorney with the law firm of Black Lowe & Graham^{PLLC}, counsel for Verathon Inc. ("Verathon"). I make this declaration on personal knowledge and all attached documents are confirmed to be true and accurate copies.

2. Attached as Exhibit A is a copy of correspondence dated February 10, 2003, from Charles Baxley, Esq., attorney of record for U.S. Patent No. 5,827,178 and counsel to Plaintiff, to Dr. John A. Pacey, then Chief Executive Officer of Saturn Biomedical Systems, predecessor corporation to Defendant Verathon, Inc.

3. Attached as Exhibit B is a copy of the Reexamination Operational Statistics dated September 30, 2010 and available on the official website of the United States Patent and Trademark Office at:

http://www.uspto.gov/patents/stats/EP_quarterly_report_Sept_30_2010.pdf.

4. Attached as Exhibit C is a copy of the *Ex Parte* Reexamination Filing Data dated September 30, 2010 and available on the official website of the United States Patent and Trademark Office at:

http://www.uspto.gov/patents/stats/Reexam_Operations_from_2007_to_2010.pdf.

5. Attached as Exhibit D is copy of the Request for Reexamination Proceeding filed October 29, 2010 with the United States Patent and Trademark Office, excluding prior art references, and including the PTO's Title Report, Notice Of Assignment Of Reexamination Request, and Notice Of Reexamination Request Filing Date.

6. Prior to filing this Motion, I joined calls placed to both David A. Loewenstein and Douglas J. Gilbert, counsel of record for Plaintiff, to notify them that Verathon intended to file a motion to stay the litigation inquire whether Plaintiff would stipulate to the Motion. Mr. Loewenstein confirmed via voicemail left with Richard Black, which I reviewed, that Plaintiff would not stipulate to this Stay.

7. I spoke personally with James J. Kulbaski, counsel to Defendant Pentax of America, who confirmed that his client would not oppose this Motion.

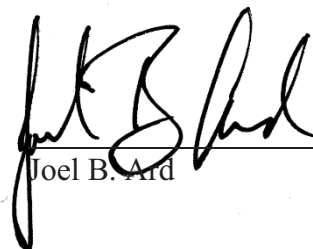
8. I spoke personally with Vicki S. Veenker, counsel to Defendant LMA North America, Inc., who confirmed that her client would not oppose this Motion.

9. I spoke personally with Richard J. Basile, counsel to Defendant Karl Storz Endoscopy-America, Inc., who confirmed that his client would not oppose this Motion.

10. I attempted to reach Brian M. Gaff, counsel to Defendant Aircraft Medical, Ltd., but was unable to speak with him regarding this Motion.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 16th day of November, 2010.



Joel B. Ard